# HIGH COURT OF UTTARANCHAL AT NAINITAL

**Criminal Appeal No.1179 of 2001**
(Old No. 1431 of 1997)

Puran Chandra
S/o Sri Hari Ram
R/o Hari Nagar, P.S. Bhimtal
District Nainital ……Appellant

Vs.

State of Uttaranchal ……....Respondent

Sri Rajendra Kotiyal learned counsel for the appellant.
Sri D.K. Sharma learned G.A.

**Coram:- Hon'ble Irshad Hussain, J.**
**Hon'ble J. C. S. Rawat, J.**

**Dated:- 29th July, 2004**

**ORAL JUDGMENT (Per: - Hon'ble Justice J.C.S. Rawat)**

This is a criminal appeal under Section 374 of the Code of Criminal Procedure (for short 'Code') against the judgment and order dated 31.7.1997 passed by the IInd Addl. Sessions Judge, Nainital in S.T. No. 115/1994 convicting and sentencing the appellant to undergo RI for life imprisonment, RI for five years and RI for two years under Section 302, 307 & 201 IPC respectively. However, by the said judgment and order accused-Shyama Devi was found not guilty under section 302 & 201 IPC for the charge framed against her and she was acquitted accordingly.

2. The case of prosecution, in brief, is that Head Constable Kripal Singh (PW-6) and S.I. Govind Singh Rawat-deceased P.S. Gopeshwar, District Chamoli with a service revolver and cartridges of .38 bore, pair of handcuffs and necessary clothes in their bag reached at Karan-Prayag on 27.7.1993 in search of Ganga Prasad named in connection with a kidnapping of a girl in crime no.42/1993 under section 363/366 IPC. On enquiry being made it was disclosed that Ganga Prasad had gone to Bhimtal, District Nainital. On this information, these police personnel

went to Bhimtal, where Ganga Prasad met them. Ganga Prasad told them that he would have the kidnapped girl recovered from his house at Harinagar, Bhamtal. Ganga Prasad took them to Harinagar. Both the police personnel took the night meal in the house of Ganga Prasad. S.I. Govind Singh Rawat-deceased accompanied Ganga Prasad and appellant Puran Chandra to meet the girl at 11:30 PM on 27.7.1993 which the H.C. Kripal Singh (PW-6) remained at the house of Ganga Prasad. Ganga Prasad and appellant Puran Chandra returned to their house at about 1 AM in the night. On query being made by the H.C. Kripal Singh (PW-6), they told him that S.I. Govind Singh Rawat is staying with the girl and he also inquired to reach there. When H.C. Kripal Singh (PW-6) alongwith Ganga Prasad and Puran Chandra-appellant reached near the poultry farm adjacent to the house of the appellant, all of a sudden, the appellant Puran Chandra took out a 'Khudal' from the roof of the poultry house whereas Ganga Prasad had already an iron rod in his hand. Looking to the activities of Ganga Prasad and appellant-Puran Chandra, he got suspicious and came back to his room. Both Ganga Prasad and appellant Puran Chandra went inside their house. They again came out from their house and told H.C. Kripal Singh (PW-6) that S.I. Govind Singh Rawat-deceased had asked him to bring their belongings there. Again H.C. Kripal Singh (PW-6) reached near the poultry farm but again looking to the activities of Ganga Prasad and appellant Puran Chandra, he suspected some foul play and returned to his room and bolted the door from inside. At 2:20 AM in the night Ganga Prasad and appellant Puran Chandra on one pretext or the another asked the H.C. Kripal Singh (PW-6) to open the door. Ultimately, they forcibly opened the door of the room and wanted to assault H.C. Kripal Singh (PW-6). Somehow the H.C. Kripal Singh (PW-6) escaped from the place of incident. He lodged the FIR at police station Bhimtal on 28.7.1993 at 9:05 AM. Thereafter, D.R. Arya (PW-7) S.H.O. Bhimtal after taking some police personnel alongwith the H.C. Kripal Singh (PW-6) reached the place of occurrence at village Harinagar. Shyama Devi was there in the house and at her instance the dead body of the S.I. Govind Singh Rawat-deceased was recovered from the Gadhera. Inquest report (Ex.Ka.3) was prepared by Girish Chandra Joshi (PW3).

He also prepared the letters (Ex.ka.4 to Ex.ka.8) for sending the dead body for autopsy, etc. and site plan Ex.ka.9. The dead body was sealed at the sport and sent for postmortem. Girish Chandra Joshi (PW3) also recovered burning lamp under the recovery memo Ex.ka.11. He also collected the sample of simple earth and blood stained earth from the spot under recovery memo Ex.ka.10. Shyama Devi was arrested at the spot under the recovery memo Ex.Ka.12. The other part of the investigation was taken up by I.O. as usual which culminated into the submission of chargesheet.

3. The charges under section 302, 307 and 201 IPC were framed by the learned Additional Sessions Judge against the appellant Puran Chandra. However, Shyama Devi was found not guilty under section 302 & 201 IPC for the charge framed against her and she was acquitted. Ganga Prasad committed suicide during the investigation as alleged by the prosecution.

4. In order to prove its case, the prosecution examined as many as seven witnesses. Kunwar Ram (PW1) and Kailash Chandra (PW2) are the witnesses of the recovery of the articles at the instance of accused Puran Chandra under section 27 of the Indian Evidence Act. Both witnesses were declared hostile and did not support the prosecution case. Girish Chandra Joshi (PW3) was the Naib Tehsildar who conducted the initial investigation of the case. The inquest report (Ex.ka.3), letters to C.M.O. for sending the dead body for autopsy (Ex.ka.4 to ka.5) and site plan (Ex.ka.9) were prepared by Girish Chandra Joshi (PW3). He recovered an oil burning burning lamp (Ex.11) from the place of incident under the recovery memo Ex.ka.11. He also collected the samples of plain earth and blood stained earth from the spot vide recovery memo on the basis of written report submitted the H.C. Kripal Singh (PW-6) and made an general diary (Ex.ka.17).

5. Dr. Navin Chandra (PW-5) was the Medical Officer who conduced the autopsy of the dead body of the deceased on 29.7.1993 and found the following ante mortem injuries on the person of deceased-S.I. Govind Singh Rawat in the postmortem report (Ex.ka.18):-

i) Incised wound 6cm x 2cm x bone deep oblique on the back of head 3cm from right ear, tail end towards back.

ii) Incised wound 4cm x 2cm x bond deep, oblique, 6cm from and above injury no.1, tail end towards left side.

iii) Incised wound 5cm x 2cm x muscle deep on left side of heard vertically placed 12 cm above, left ear brim, tail end towards midline of scalp.

iv) Incised wound 3cm x 1cm x muscle deep, vertical on forehead 2cm infront of injury no.3.

v) Incised wound 5 cm x 2cm x scalp deep, semicircular extending from top of left ear cartilage. Tail end directed backwards.

vi) Abraded contusion, 4cm x 3cm on angle of left jaw.

vii) Incised wound 2cm x 1cm x muscle deep, transverse on posterior pleural aspect of left arm, 14cm below left shoulder.

viii) Incised wound 2cm x 1cm x muscle deep 0.5cm lateral to injury no. 7.

ix) Incised wound 1cm x 0.5cm x muscle deep 4cm below injury no. 8.

x) Incised wound 1cm x 0.5cm x muscle deep, 1cm below injury no.9.

xi) Incised wound 4cm x 2cm x muscle deep on lateral aspect of left forearm 5cm below left elbow joint.

xii) Linear abrasion 8cm x obliquely placed on lateral aspect of left forearm 4cm below injury no.11.

xiii) Incised wound 3cm x 10cm x muscle deep on lateral aspect of left forearm 6cm below injury no.12.

xiv) Incised wound 4cm x 5cm x muscle deep on posterior lateral aspect of right arm 18cm below right shoulder.

xv) Abraded contusion 15cm x 6cm on anterior lateral aspect of right arm 2 cm above right wrist.

xvi) Incised wound on the back above right hand, index, middle and ring finger knuckles.

xvii) Incised wound semicircular 10cm x 4cm x muscle deep on top of left shoulder, tail end towards backwards.

xviii) Incised wound 2cm x 1cm x muscle deep over left scapular region 4cm below injury no. 18.

xx) Abraded contusion 2cm x 2cm on right side at sternoclanicular joint.

xxi) Lacerated wound 0.5cm in circumference with margins inverted and black in and around the wound. On opening the wound present, 1cm in circumference, just below, the Manubrim right side (wound of entry) on opening the wound the track went through the 2nd, 3rd intercostal space, went back of chest lacerating pleura of right lung, piercing the 6th ribs, its fracture and facture of intraspinetus part of body of scapula, haematong 8cm x 8cm present in the region corresponding to back of rib 2 scapula and the back corresponding to the exterior through injury no.22 (below).

xxii) Lacerated wound 1cm x 1cm exerted margin between 6th, 27th rib of right side (wound of exit).

xxiii) Lacerated wound 0.5cm x 0.5cm inverted margins and blackening in 2 around the wound of 1cm circumference present 2cm below x iphisternum- on opening 2 tracing the track went through the anterior and posterior wall of stomach, then to posterior peritoneum and transversed the retroperitoneal space. Haematomas and went to the exterior through wound no. 24 below.

xxiv) Lacerated wound 1cm x 1cm everted margins 2cm above right side 10 cm lateral to spine in temper region (wound of exit).

6. In the opinion of the medical officer, the death was caused due to the shock and haemorrhage resulting from ante mortem injuries.

7. The prosecution had produced head constable Kripal Singh as PW-6. His medical examination was conducted by Dr. Umesh Sambhal which is Ex. Ka.24. The following injures were found on the person of Kripal Singh.

a. Swelling on the outer aspect of left leg and ankle. On palpation, there is tenderness on middle part of fibula alongwith palpable crepitation tenderness is present over lower part of fibula.
b. Liner red coloured misprint of about 8cm x 2cm size over the outer and upper part of left arm
c. Irregular laceration about one inch in size and skin deep covered with clotted blood over the posterior aspect of left forearm about 8cm below the elbow joint.
d. Swelling about 5cm in diameter over the left side parital imminence of skull.
e. Swelling and tenderness over lower part of chest on the right side.
f. Multiple abrasions (grazes) over the back covered with clotted blood.
g. Multiple small abrasion in both palms on front of both knees and on other places of body.

8. He was advised X-ray for injury no.1. In his opinion, all injuries were simple except injury no.1. The injuries were found 36 hours old. The prosecution did not adduce any documentary evidence that the X-ray was conducted and there was any fracture on the person of H.C. Kripal Singh(PW-6).

9. The prosecution produced D.R. Arya as PW-7 who partly conducted the investigation. He arrested the appellant-Puran Chandra on

29.8.1993 and recovered two bags containing sweater, pair of handcuffs, clothes, dress and umbrella etc. of the deceased and H.C. Kripal Singh PW-6 (material Ex. 1-10) under section 27 of the Evidence Act at the instance of the appellant under the recovery memo Ex.Ka.21.

10. The learned Additional Sessions Judge on the basis of his appreciation of the evidence in the case held that the prosecution could not prove its case against Smt. Shyama Devi under section 302/201 IPC as such she was acquitted. The learned Additional Sessions Judge further held that the prosecution had proved its case against the accused-appellant Puran Chandra beyond reasonable doubt and sentenced him to undergo RI for life imprisonment, RI for five years and RI for two years under sections 302, 307 and 201 IPC respectively.

11. We have heard Sri Rajendra Kotiyal learned counsel for the appellant and Sri D.K. Sharma learned G.A. on behalf of the State. We have also gone through the evidence and material on record.

12. At the outset, it need to be mentioned that it is not disputed that the S.I. Govind Singh Rawat-deceased met a homicidal death on account of injuries sustained by him on the date of occurrence. Medical Officer (PW-5) had also deposed before the court that he conducted the postmortem of dead body of the deceased (Ex.Ka.18) and also found that death occurred about one and a half day old and that the death was caused due to shock and haemorrhage resulting from the ante mortem injuries.

13. Now, we have to consider whether the appellant Puran Chandra was responsible for the injuries sustained by S.I. Govind Singh Rawat-deceased. There was no eye witness of the occurrence. At the outset, it need to be mentioned here that the prosecution case rests upon the circumstantial evidence. The law which is fairly settled about circumstantial evidence is that it would be such as to point out only to the guilt of the accused and the evidence should exclude all other hypothesis except the guilt of the accused. It is often said that though witnesses may

lie, circumstances will not but at the same time it must cautiously be scrutinized to see that the incriminating circumstances are such as to lead only to a hypothesis of guilt and reasonably exclude every possibility of innocence of the accused. In order to sustain conviction on circumstantial evidence, each of the incriminating piece of circumstantial evidence should be proved by cogent and reliable evidence and the court should be satisfied that the piece of evidence taken together forge such a chain wherefrom no interference other than the guilt can be drawn.

14. The Hon'ble Apex Court in Sharad Birdhichand Sardar Vs. State of Maharashtra (AIR 1984 SC 1622) while dealing with circumstantial evidence, has been held that onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent before conviction could be based on circumstantial evidence were enumerated as under:-

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) the circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) There must be a chain of evidence so complete as not to leave any reasonable

ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

The above decision was also relied on and affirmed in the latest decision of the Hon'ble Apex Court in State of Rajasthan Vs. Rajaram 2003 Cri. L.J. p/3901.

15. Keeping in view the above principle of law, we shall consider the circumstances projected by the prosecution against the appellant. The first circumstance relied upon the prosecution is that the appellant and S.I. Govind Singh Rawat-deceased were seen lastly in the house of the appellant at about 11:30 PM on 27.7.1993. S.I. Govind Singh Rawat-deceased was lastly seen alive by H.C. Kripal Singh (PW6) in the company of the appellant at the time of leaving the house of the appellant at about 11:30 PM. H.C. Kripal Singh (PW6) stated that he and S.I. Govind Singh Rawat-deceased arrested Ganga Prasad at Bhimtal and went to the house of Ganga Prasad at Harinagar, Bhimtal to recover the girl. After taking the night meal, Ganga Prasad and appellant Puran Chandra asked S.I. Govind Singh Rawat to accompany them. Ganga Prasad and Puran Chandra told H.C. Kripal Singh (PW-6) to remain in the house. Thereafter they went to recover the kidnapped girl at 11:30 PM on 27.7.1993. Ganga Prasad and appellant Puran Chandra returned to house at about 1:00PM. On being made inquiry about the non-arrival of S.I. Govind Singh Rawat, Ganga Prasad and the appellant-Puran Chandra told him that the S.I. Govind Singh Rawat was talking with the girl. They further told H.C. Kripal Singh (PW-6) that he had been asked to join S.I. Govind Singh Rawat-deceased there. On the said statement, when head constable Kripal Singh (PW-6) alongwith Ganga Prasad and appellant-Puran Chandra reached near the poultry farm situated near the house of the appellant, all of a sudden appellant-Puran Chanda took 'Khudal' from the roof of the poultry farm. Ganga Prasad was there carrying an iron rod with him. H.C. Kripal Singh (PW-6) got suspicious and returned to the

house. Ganga Prasad and appellant-Puran Chandra again asked the H.C. Kripal Singh (PW-6) to join S.I. Govind Singh Rawat-deceased with his belongings. Again they reached near the poultry farm and again H.C. Kripal Singh (PW-6) got suspicious by the conduct of Ganga Prasad and appellant-Puran Chandra. Somehow the H.C. Kripal Singh (PW6) came to the house and bolted it inside the room. They thereafter forcibly opened the room and appellant Puran Chandra attacked head constable Kripal Singh (PW6) by a 'Danda' and Ganga Ram attacked on his leg by an iron rod. Somehow the head Constable Kripal Singh (PW6) managed to escape from the place of incident.

16. The statement of head constable Kripal Singh (PW-6) clearly reveal that his conduct was unnatural because he and S.I. Govind Singh Rawat-deceased went to Harinagar, Bhimtal in connection with an investigation of a case and there was no occasion for the H.C. Kripal Singh (PW6) not to go with S.I. Govind Singh Rawat-deceased and to remain in the house of appellant and the S.I. Govind Singh Rawat-deceased was left alone at the unknown place. The story of the prosecution further did not inspire confidence that the appellant and Ganga Prasad came at 1:00 AM in the night and again they asked H.C. Kripal Singh (PW-6) that he had been called by S.I. Govind Singh Rawat-deceased. He went with them and he returned from the poultry farm adjacent to the house of the appellant due to suspicious activities of the appellant. If it was so, there was no occasion for the H.C. Kripal Singh (PW-6) to go again and come back to the house. The conduct of the H.C. Kripal Singh (PW-6) is unnatural and it creates a doubt about the presence of H.C. Kripal Singh (PW-6) at Harinagar, Bhimtal.

17. Although, Head Constable Kripal Singh (PW-6) lodged the FIR at the police station at 9:05AM on 28.7.1993 but his medical examination was not conducted the same day. The prosecution has not given any explanation as to why his medical examination was not conducted on 28.7.1993. If, there were injuries on his person, the medical examination would have been conducted the same day i.e. 28.7.1993. His medical

examination was conducted on 29.7.1993. The delay in conducting the medical examination thus make out a strong probability that the prosecution has set up a theory after due deliberation. This fact further stand corroborated by the documentary evidence produce by the prosecution. The FIR (Ex.Ka.16) clearly reveal that the Section 332 IPC has been added later on in the FIR. This further stand supported by GD (Ex.Ka.17) which shows that the case had been registered under section 394, 302, 201 IPC and not under section 332 IPC. It is further significant that G.D. (Ex. Ka.17) is the carbon copy of the original G.D. but the time and date of the said G.D. had been written by ink. I.O. Sri. D.R. Arya (PW-7) had tried to explain it by stating that the carbon was misplaced, hence the time and date were added by the ink subsequently. The fact that the time and date were written later on stand corroborated by the inquest report (Ex.Ka.3), letter for postmortem (Ex.Ka.6) in which the I.O. had not mentioned the case no. and name of the accused. In view thereof, the explanation did not inspire confidence. This apart, the inquest report (Ex.ka.3) and photo lash did not indicate the name of the accused. The sample seal (Ex.Ka.8) and site plan (Ex.ka.9) clearly reveal that a case only under section 302/201 IPC had been registered. The FIR was received by the C.J.M. on 16.8.1993. These foregoing circumstances clearly reveal that there were no injuries on the person of H.C. Kripal Singh (PW-6) on 28.7.1993. Therefore the medical examination was not conducted on the same day as the deliberations were going on as to how to build up the theory of the prosecution again the accused. All this would support the defence version that FIR in which the names of the accused were mentioned probably came into existence much later. In this context, it is apposite to refer to the decision of the Supreme Court in Meharaj Singh Vs. State of U.P. SCC 1994 (5) 188: SCC (Cri) 1994 1391. There also the question whether FIR was ante-timed to rope in the accused after some deliberations or to suit the investigation came up for consideration. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciation the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in

which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, call ed a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The absence of above details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was them ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed.

18. Apart from this, there are material contradictions with regard to the arrest of Ganga Prasad on 27.7.1993 at about 8:00 PM at Bhimtal. The FIR indicate that Ganga Prasad met H.C. Kripal Singh (PW6) and S.I. Govind Singh Rawat-deceased at the bus stand, Bhimtal. The H.C. Kripal Singh (PW-6) stated that Ganga Prasad was noticed in the head light of the taxi near the P.S. Bhimtal and was then arrested. No arrest memo of Ganga Prasad was produced in evidence by the prosecution. There is a variation between the statement of the H.C. Kripal Singh (PW-6) and the version of F.I.R. This fact itself create a dent in the credibility of the testimony of H.C. Kripal Singh (PW-6).

19. The prosecution had not indicated in the evidence that S.I. Govind Singh Rawat-deceased and H.C. Kripal Singh (PW-6) have made the efforts to arrest Ganga Prasad and appellant-Puran Chandra on the date of incident. Appellant-Puran Chandra was arrested on 19.8.1983 and Ganga Prasad was never arrested by the police. It has been mentioned in the chargesheet that Ganga Prasad committed the suicide by jumping into the river Pinder at Karanprayag. The prosecution had also submitted the site plan indicating the place from where Ganga Prasad jumped into the river for committing suicide. On the one hand, the police could not arrest Ganga Prasad and on the other hand, the police was so active that they were watching all the action and activities including the action of his suicide. The site plan, which is on record and genuineness of which had been admitted by the defence, reveal as to how Ganga Prasad came at the place from where he committed suicide. It also indicate that the witnesses were there while he was committing suicide. The dead body of Ganga Prasad was not recovered as such no postmortem was conducted. This is a very strange fact that the police was not able to arrest Ganga Prasad but he committed the suicide in presence of the police and witnesses. This fact also creates a strong suspicious in the prosecution story and assail the reliability of its evidence led at the trial.

20. In view of foregoing discussions, we are of the view that the evidence in regard to the presence of H.C. Kripal Singh (PW-6) at the place of the incident on the date of occurrence is not credible and cogent. As such the evidence of last seen alive of S.I. Govind Singh Rawat-deceased in the company of Ganga Prasad and appellant Puran Chandra was not proved beyond reasonable doubt.

21. The other circumstance relied upon by the prosecution to prove the guilt of the acccused is the recovery of two bags in which the pair of handcuffs etc. belongings of the S.I. Govind Singh Rawat-deceased and H.C. Kripal Singh (PW-6) were kept under the recovery memo Ex.ka.21. Section 27 of the Indian Evidence Act is an exception to the general rule that a statement made before the police is not admissible in evidence. The

following are the requirements or conditions for application of Section 27 of the India Evidence Act:-

(i) The fact must have been discovered in consequence of the information received from the accused.

(ii) The person giving the information must be accused of an offence.

(iii) He must be in custody of a police officer.

(iv) Only that portion of the information, which relates strictly to discover can be proved. The rest is irrelevant.

(v) The discovery of fact must relate to the commission of some crime.

(vi) Before the statement is proved somebody must depose that some article were discovered in consequence of the information received from the accused.

22. In the light of the above parameters, the recovery in the present case is being discussed. The recovery memo (Ex. Ka.21) clearly reveal that there were two public witnesses, namely Kunwer Ram (PW-1) and Kailash Chandra (PW-2). Both the witnesses have been declared hostile by the prosecution as they have not supported the prosecution case. D.R. Arya (PW-7) stated that he made the recovery of articles and ‘danda’ under the recovery memo Ex.ka. 21 at the instance of the appellant Puran Chandra in presence of the public witnesses Kunwar Ram (PW-1) and Kailash Chandra (PW-2). Both the public witnesses have not supported the recovery of articles and ‘danda’ at the instance of the appellant and they were declared hostile. The deceased was also a police officer. As such D.R. Arya (PW-7) is an interested witness. The recovery of two bags and ‘danda’ at the instance of appellant does not inspire confidence and therefore the evidence of recovery cannot also be taken to establish the guilt of the appellant.

23. On consideration of the totality of facts, circumstances, evidence and the material on record, we are of the considered opinion that the circumstances as relied upon by the prosecution have not been established and the appellant could not have been held guilty of committing the offence with which he had been charged. The learned trial Judge erred in holding that the prosecution had established the guilt against the accused beyond reasonable doubt. The appeal thus succeed and is to be allowed accordingly.

24. The appeal is thus allowed. Conviction and sentence awarded to the appellant per judgment dated 31.7.19987 passed by the IInd Addl. Sessions Judge, Nainital are set-aside. The appellant is on bail. He need not surrender. His bail bonds are cancelled and sureties discharged.

**(J. C. S. Rawat, J.)** **(Irshad Hussain, J.)**

**LSR**